

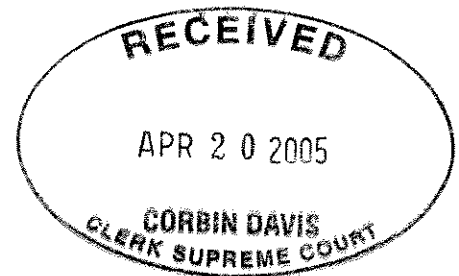


ELWOOD L. BROWN
JUDGE OF PROBATE

**ST. CLAIR COUNTY
PROBATE COURT
31st CIRCUIT COURT FAMILY DIVISION**
201 McMorran Blvd. Room 2200
Port Huron, MI 48060
(810) 985-2010

Michigan Supreme Court
Office of the Clerk
P.O. Box 30052
Lansing, Michigan 48909
April 19, 2005

Re: ADM File No. 2003-62



Dear Justices,

I write with comment regarding proposed rule 1.5 of the MRPC. I am a member of the State Bar of Michigan Ethics Committee and was co-chair of that committee when the committee examined the existing rules relative to the Model Rules established by the ABA and made our proposal to the Supreme Court. I mention this only for background as to my awareness of the process that brought this matter to this point. I do not speak for the Committee in making these comments.

As it relates to proposed rule 1.5 (fees) the Ethics Committee proposed the rule as is now published by the Supreme Court except subpart (f). On April 16, 2005 I attended the Representative Assembly Meeting on the proposed rules as a resource to the Assembly. This rule was discussed and a provision relating to non-refundable fees was adopted in a different form than that published by the Court.

I am concerned as to the wisdom of any provision in the Ethics rules relating to non-refundable fees. It seems to me that Rule 1.5 (a) and (f) are inconsistent. Subpart (a) essentially provides that a lawyer shall not charge an illegal or clearly excessive fee. Subpart (f) essentially provides that a lawyer may agree to a non-refundable fee. What would be the purpose of a non-refundable fee unless it would be to provide that the lawyer might keep a fee that may not have been earned. If the lawyer has earned the fee there would be no need to indicate that the fee or any portion thereof is non-refundable. If the lawyer has not earned the fee and does not refund the unearned portion isn't there a danger that the lawyer would be charging a clearly excessive fee. (For example if a lawyer charges a client a non-refundable fee of \$20,000 to represent that client in a felony embezzlement case that ends at the preliminary examination stage with a plea to a misdemeanor and the time and effort the lawyer has into the case equals an amount

earned of \$5,000, does this not possibly amount to the charging of a clearly excessive fee?)

If the Supreme Court believes that some provision relating to non-refundable fees is necessary I recommend adding 1.5(f)(5) to include another proviso stating "the fee is not clearly excessive under (a) of this rule".

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Elwood L. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Elwood L. Brown
P-30069